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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 6.8.2007.

Smt.Prem Lata Nayar and another

.... Petitioners.

vs

M/s. Goyal Knitwears Limited and another

.... Respondents.

Before : Hon'ble Mr. Justice R.S.Madan.

Present: Mr.Sham Lal Bhalla,Advocate,for the petitioners.

R.S.Madan, J.(Oral)

This civil revision is directed against the order dated 18.7.2007 passed by the learned Additional Civil Judge (Senior Division), Ludhiana, vide which the application under Order 6 Rule 17 of the CPC filed by the respondent- plaintiff to amend the plaint was allowed and the suit for permanent injunction was allowed to be converted into suit for specific performance of the agreement to sell.

Brief facts of the case are that an agreement to sell was executed on 6.9.2005 by petitioner no.1 in favour of the plaintiff for sale of House No.B-XIX-89/1, the Mall, Ludhiana, and it was agreed upon that the sale-deed was to be executed on or before 30.4.2006. The time to execute the sale-deed from 30.4.2006 to 15.8.2006 was extended by mutual consent by memorandum of understanding dated 22.4.2006. When defendants failed to perform their part of the contract, a telegraphic notice was issued to them and ultimately on 14.8.2006 the time to get the sale deed executed was further extended upto 15.11.2006. Subsequently, a notice was received from the counsel representing the defendants denying the memorandum of

understanding dated 14.8.2006 in which extension of time upto 15.11.2006 was denied. Thereafter, the plaintiff filed a suit for permanent injunction restraining petitioner no.1 (defendant no.1) from alienating House No.B-XIX-89/1, the Mall, Ludhiana.

During the pendency of the suit for permanent injunction, the time for execution and registration of the sale-deed arrived and moreover, after entering into the sale agreement, the company converted itself from a public limited company to private limited company. Consequential amendments in the plaint were sought by filing application for amendment of the plaint under order 6 Rule 17 of the Code of Civil Procedure.

The aforesaid application for amendment was contested, wherein the preliminary objections regarding its maintainability, time barred, estoppel, and change of nature of suit, were taken. On merits, it was alleged that the plaintiff himself has failed to perform his part of contract. It was also denied that time to execute the agreement to sell was extended upto 15.11.2006. It was also alleged that the plaintiff was never ready and willing to perform his part of contract. It was also alleged that even at the time of filing of the suit for permanent injunction, the right to sue for specific performance had already accrued. It was also pleaded that the amendments sought are substantial and are based upon distinct and separate cause of action. It was submitted that if the amendments were allowed it would amount to substitution of the entire case with a new cause of action and it would prejudice the rights of the defendants.

After hearing the rival contentions of the learned counsel for the parties, and relying upon *Raj Kumar vs. Dipender Kaur Sethi* 2005 (1)

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Civil Court Cases 354, wherein it has been laid down by the Apex Court that a suit for permanent injunction based upon an agreement to sell can be converted into a suit for specific performance by seeking amendment in the plaint and no injustice would be caused to the defendants as it do not change the original controversy between the parties. Learned Additional Civil Judge (Senior Division), Ludhiana, allowed the amendment of the plaint, subject to payment of Rs.1000/- as costs.

Aggrieved by the impugned order dated 18.7.2007, the defendants- petitioners filed this civil revision.

I have heard the learned counsel for the petitioners.

It is contended by the learned counsel for the petitioners that the suit for permanent injunction was filed on 2.11.2006 and at that time the plaintiff had the cause of action to file the suit for specific performance but instead he filed suit for permanent injunction. Thus, according to the learned counsel, if the proposed amendment is allowed it would prejudice the case of the defendants- petitioners.

There is no force in the contention of the learned counsel. Written statement was filed in the case on 13.11.2006 and the last date of getting the sale deed executed was 15.11.2006. Admittedly, on that date, the plaintiff could not file the suit for specific performance.

Another contention of the learned counsel that the plaintiff has sought amendment of the plaint on 3.4.2007, which shows that the plaintiff was not ready and willing to perform his part of the contract. This contention has also no force as the plaintiff has filed suit for permanent injunction for restraining the defendants from alienating the house in

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question which shows his bonafide to perform his part of the contract. Be that as it may, it is a matter of evidence which will be led by the parties in respect of their claims set up before the trial court in the civil suit. The learned trial court has also compensated the petitioners by imposing the costs on the plaintiff.

In view of the above, I do not find any infirmity in the impugned order and the same does not call for any interference. Accordingly, this revision is dismissed, in limine.

6.8.2007. (R.S.Madan)
vs. Judge.